

## Rivers, Tahani

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**From:** Henault, John (Perkins Coie) <JHenault@perkinscoie.com>  
**Sent:** Thursday, July 14, 2016 11:34 AM  
**To:** Rivers, Tahani  
**Subject:** FW: Calumet Superior LLC - Administrative Settlement Agreement - AED/MSEB # 8201  
**Attachments:** removed.txt; Calumet Superior LLC - 14 July 2016 RIN Integrity Report.pdf

Ms. Rivers,

Please find attached on behalf of Calumet Superior LLC a RIN Integrity Report relating to the below matter. Please let me know if you have any questions.

Regards,

John Henault

**John Henault | Perkins Coie LLP**  
**SENIOR COUNSEL**  
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**From:** Rivers, Tahani [<mailto:Rivers.Tahani@epa.gov>]  
**Sent:** Wednesday, September 30, 2015 12:04 PM  
**To:** Tony Wanta <[Tony.Wanta@calumetspecialty.com](mailto:Tony.Wanta@calumetspecialty.com)>  
**Subject:** Calumet Superior LLC - Administrative Settlement Agreement - AED/MSEB # 8201

We are sending you the attached administrative settlement agreement (ASA) as a follow-up to our July 29, 2015, email. The ASA will resolve violations arising from Calumet Superior's use of New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs to meet its 2010, 2011, or 2012 Renewable Volume Obligation(s) (RVO).

The United States Environmental Protection Agency (EPA) would like to expeditiously settle this matter. For your information, we are extending settlement offers to all obligated parties that used renewable identification numbers (RINs) identified in the notice of violation (NOV) that the EPA issued to New Energy Fuels Inc. and Chieftain Biofuels LLC on July 28, 2015.

As previously explained to you in our July 29, 2015 e-mail, the attached ASA resolves violations arising from your use of New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs and is generally consistent with the EPA's Interim Enforcement Response Policies (IERPs) and the ASAs that resolved other violations arising from the use of invalid RINs, with one exception. This ASA will resolve all use and shortfall violations, but will not include additional penalties for shortfall violations. Because of the unique circumstances associated with this case, the EPA is including these more favorable terms as an incentive for obligated parties to promptly resolve violations arising from the use of New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs. You can find information about the IERPs and ASAs that resolved other violations

arising from the use of invalid RINs at: <http://www2.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program>.

The terms of this ASA are not negotiable. This offer of settlement expires 30 calendar days from the date of this email. To accept this offer, have an authorized representative from your company sign and date this ASA, email a scanned copy of the signed ASA to Tahani Rivers at [rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov), and mail the original by courier to Tahani Rivers at the address below:

U.S. Environmental Protection Agency  
1595 Wynkoop Street (8MSU)  
Denver, Colorado 80202

Since this agreement will not become effective until it is signed by the Director of the EPA's Air Enforcement Division, please do not send payment to the EPA until you have received a fully executed version of the ASA.

As previously explained to you in our July 29, 2015 e-mail, by July 29, 2016, you must submit a RIN Integrity Report if you have not previously submitted one to the EPA. If you previously submitted a RIN Integrity Report to the EPA, you are required to update it and resubmit it to Tahani Rivers at [rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov). The RIN Integrity Report must describe the methodology or system that the company has implemented or adopted at the time of the report to ensure that RINs it uses to satisfy its RVO are valid.

For more information regarding the contents of the RIN Integrity Report, please see:

<http://compliance.supportportal.com/link/portal/23002/23009/Article/33875/What-should-parties-include-in-a-RIN-Integrity-Report-as-required-in-the-EPA-s-March-2012-Interim-Enforcement-Response-Policy-IERP>.

If you have any questions, please feel free to contact me.

Best regards,

Tahani Rivers



Tahani Rivers, Attorney-Advisor  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
1595 Wynkoop Street, Mail code: 8MSU  
Denver, CO 80202  
Ph: 303.312.7155  
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**From:** Rivers, Tahani

**Sent:** Wednesday, July 29, 2015 11:25 AM

**To:** 'TONY.WANTA@CALUMETSPECIALTY.COM'

**Subject:** Calumet Superior LLC - RFS Violations Arising from the Use of RINs Generated by New Energy Fuels Inc. and/or Chieftain Biofuels LLC

On July 28, 2015, the United States Environmental Protection Agency (EPA or Agency) issued New Energy Fuels Inc. and Chieftain Biofuels LLC, a Notice of Violation (NOV) alleging violations of the Renewable Fuel Standards at 40 C.F.R. Part 80. The NOV alleges New Energy Fuels Inc. and Chieftain Biofuels LLC generated invalid Renewable Identification Numbers (RINs). You may find a copy of the NOV at: <http://www2.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program>.

Our records indicate that you have used invalid New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs to meet your renewable volume obligation (RVO). Use of these RINs is a violation of the requirements of Clean Air Act Section 211(o), 42 U.S.C. § 7545(o), and 40 CFR 80.1460(c)(1). That is, it is a violation of the Clean Air Act to use invalid RINs to meet a person's RVO.

The EPA has published two Interim Enforcement Response Policies (IERPs) that set forth a streamlined approach to resolve violations arising from the use of invalid Biomass-Based Diesel RINs. The IERPs can be found at: <http://www2.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program>. The IERPs explain that the EPA is authorized to pursue "use violations" arising from an obligated party's use of invalid RINs to meet their RVO, and "shortfall violations" arising from an obligated party's failure to acquire sufficient RINs to meet their RVO as a result of the use of invalid RINs.

In order to resolve the violations arising from your use of invalid New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs, you must:

1. resubmit reports to remove the invalid RINs identified in the New Energy Fuels Inc. and Chieftain Biofuels LLC NOV that you used for compliance within 30 days of this email, and
2. replace the invalid RINs identified in the New Energy Fuels Inc. and Chieftain Biofuels LLC NOV that you used for compliance within 60 days of the date of this email with valid RINs with the same D Code as the invalid RINs.

The EPA's Office of Transportation and Air Quality will be contacting you shortly with specific instructions on how to correct your annual compliance reports and replace the invalid RINs.

In the coming months, we intend to present you with an Administrative Settlement Agreement (ASA) to resolve the civil violations related to your use of invalid New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs. The terms of this ASA will be non-negotiable, and the offer represented by the ASA will expire 30 calendar days after receipt. This ASA will be generally consistent with the IERPs and the ASAs that resolved other violations arising from the use of invalid RINs, with two exceptions. First, this ASA will resolve all use and shortfall violations, but will not include additional penalties for shortfall violations. Second, the effect of this ASA will be to resolve all potential violations arising from the use of any New Energy Fuels Inc. and Chieftain Biofuels LLC RINs, not just the specific RINs identified in the NOV. Because of the unique circumstances associated with this case, the EPA is including these more favorable terms as an incentive for obligated parties to promptly resolve violations arising from the use of New Energy Fuels Inc. and/or Chieftain Biofuels LLC RINs.

If you previously submitted a RIN Integrity Report, you are required to update it and submit it to Tahani Rivers at [rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov) within one year of the date of this email. If you have not previously submitted a RIN Integrity

Report, you must submit a RIN Integrity Report to Tahani Rivers at [rivers.tahani@epa.gov](mailto:rivers.tahani@epa.gov) within one year of the date of this email. The RIN Integrity Report must describe the methodology or system that the company has implemented or adopted at the time of the report to ensure that the RINs it uses to satisfy its RVO are valid. For more information regarding the contents of the RIN Integrity Report, please see:

<http://compliance.supportportal.com/link/portal/23002/23009/Article/33875/What-should-parties-include-in-a-RIN-Integrity-Report-as-required-in-the-EPA-s-March-2012-Interim-Enforcement-Response-Policy-IERP>.

Finally, if you are no longer the appropriate contact for this matter, please provide me with the proper contact information. If you have any questions, please feel free to contact me.

Best regards,

Tahani Rivers



Tahani Rivers, Attorney-Advisor  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
1595 Wynkoop Street, Mail code: 8MSU  
Denver, CO 80202  
Ph: 303.312.7155  
Fax: 303.312.6003

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July 14, 2016

John F. Henault  
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D. +1.202.654.6274  
F. +1.202.654.9968**VIA EMAIL**

Tahani Rivers, Esq.  
Attorney-Advisor  
U.S. Environmental Protection Agency  
Mobile Source Enforcement Branch  
1595 Wyncoop St., Mail Code 8MSU  
Denver, CO 80202  
rivers.tahani@epa.gov

**Re: *Calumet Superior, LLC - RIN Integrity Report Relating to RINs  
Generated by New Energy Fuels Inc. and/or Chieftain Biofuels LLC***

Dear Ms. Rivers:

Pursuant to the July 29, 2015 email notice from you to Tony Wanta at Calumet Superior, LLC ("Calumet"), I write to submit to EPA the RIN Integrity Report on behalf of Calumet.

**I. BACKGROUND**

On July 28, 2015, EPA issued a Notice of Violation to New Energy Fuels Inc. ("New Energy") and Chieftain Biofuels LLC ("Chieftain"), alleging that New Energy and Chieftain violated EPA's Renewable Fuel Standard ("RFS") by generating invalid RINs. One day later, on July 29, 2015, Calumet received notice from EPA that Calumet used invalid RINs generated by New Energy Fuels and/or Chieftain.

To meet its 2011 Renewable Volume Obligations ("RVO"), Calumet purchased RINs through Kempler & Co., Inc. ("Kempler") that were generated by New Energy and/or Chieftain. Unknown to Calumet at the time, the specific RINs that Calumet purchased were fraudulently produced by New Energy and/or Chieftain and, therefore, invalid for use in meeting Calumet's RVO.

On October 29, 2015, Calumet executed an Administrative Settlement Agreement with EPA, resolving EPA's civil claims for violations of the RFS program arising from Calumet's use of the invalid New Energy and/or Chieftain RINs.

**II. CALUMET'S RIN PURCHASING GUIDELINES**

In an effort to protect Calumet from purchasing invalid RINs in the future, Calumet implemented guidelines governing its RIN purchases. These RIN Purchasing Guidelines ("Guidelines") are

attached as Exhibit 1 hereto. As explained in the Guidelines, Calumet's RIN purchases will be done under the direction and supervision of Calumet's Senior Commodities Manager, who has extensive experience in the RIN market.

### **III. IMPLEMENTATION OF THE RIN PURCHASING GUIDELINES AND OTHER METHODS OR SYSTEMS TO PREVENT THE PURCHASE OF INVALID RINS**

As part of its implementation of the Guidelines, Calumet's Senior Commodities Manager and legal counsel analyzed Calumet's existing RIN purchase agreements. Calumet undertook this review to ensure that Calumet purchases RINs using consistent terms and conditions, that the terms and conditions provide certain assurances and guarantees relating to the validity of the RINs, and that Calumet has adequate recourse against RIN sellers if the RINs it purchases are deemed invalid. Calumet also restricted the authority to enter into RIN purchase agreements to a limited group of employees, thereby ensuring consistency across Calumet's RIN purchases.

In most instances, Calumet will seek to meet its RVO by purchasing RINs verified through EPA's Quality Assurance Plan ("QAP RINs"). Before purchasing QAP RINs, however, Calumet will obtain documentation identifying the producer of the QAP RINs, as well as the QAP Certificates for the RINs. Calumet will then confirm, to the extent possible through published EPA information, that the entity that certified the QAP RINs is authorized to do so by EPA.

Regardless of whether a RIN is a QAP RIN, Calumet conducts due diligence into the transaction; Calumet must know the identity of both the RIN generator and the RIN seller. Calumet seeks to purchase RINs only from known and reputable generators with a proven track record, and through known and reputable brokers when necessary.

Once it learns of the generator for a potential RIN purchase, Calumet conducts due diligence into that generator. For example, Calumet compares the RIN generator to its "blocked" list. Calumet's Senior Commodities Manager maintains an electronic list of RIN generators that are known or suspected of generating invalid or fraudulent RINs in the past. Based on this list, the EMTS system automatically prevents Calumet from purchasing RINs generated by parties on the blocked list without a manual override by the Senior Commodities Manager. Calumet also cross checks the name of the RIN generator with publicly available sources, such as Phillips 66's approved RIN generator list (available at <http://www.phillips66.com/en/products/documents/approved-rin-generators.pdf>). If there are still remaining questions regarding the RIN generator, Calumet personnel will call and discuss the generator with well-known industry consultants, such as Weaver, and/or other knowledgeable industry sources.

### **IV. CONCLUSION**

Calumet remains committed to meeting its RVO by using only valid RINs. The company believes that its RIN Purchasing Guidelines, as well as the methods and systems it has implemented to date, will protect the company in the future. To the extent that the company

Tahani Rivers, Esq.  
July 14, 2016  
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learns that it has purchased or used invalid RINs, Calumet remains open to amending its Guidelines, methods and systems to prevent such purchases.

Please let me know if you have any questions regarding Calumet's Guidelines or the methods and systems it has put in place to implement those guidelines. I can be reached by telephone at 202-654-6274 or by email at [jhenault@perkinscoie.com](mailto:jhenault@perkinscoie.com).

Regards,

A handwritten signature in black ink, appearing to read 'J. Henault', with a stylized flourish at the end.

John F. Henault

Encl.

# **EXHIBIT 1**





**Calumet Superior, LLC**  
2407 Stinson Ave, Superior, WI 54880  
Phone: (715) 398-3533 www.calumetspecialty.com

### **RIN Purchasing Guidelines**

Under EPA's Renewable Fuel Standard ("RFS"), Calumet Superior, LLC ("Calumet") must ensure that certain volumes of renewable fuel are blended into the U.S. transportation fuel supply each year. 42 U.S.C. § 7545(o). Calumet may comply with the RFS program by either blending renewable fuel into the transportation fuel it produces or by purchasing Renewable Identification Numbers ("RINs") representing volumes of renewable fuel that others have blended into the U.S. transportation fuel supply. 40 C.F.R. § 80.1427. When Calumet purchases and retires RINs, such actions shall be done under the direction and supervision of the Senior Commodities Manager. Additionally, to comply with RFS, Calumet shall consider the following guidelines:

1. Calumet should seek to purchase RINs that were generated and verified through a quality assurance audit using an EPA-approved Quality Assurance Plan ("verified RINS") whenever feasible.
2. When purchasing verified RINs is not feasible, Calumet should purchase RINs generated by reputable renewable fuel producers with proven track records of valid RIN generation  
[REDACTED]
3. Calumet should maintain a list of RIN generators with a proven track record of valid RIN generation ("approved RIN generator list"), and seek to review similar lists compiled by other obligated parties and update Calumet's list as appropriate.
4. Calumet should maintain a list of RIN generators that are known to have produced invalid RINs in the past ("blocked list"), and seek to review similar lists compiled by other obligated parties and update Calumet's list as appropriate.
5. Calumet should not purchase RINs from entities on Calumet's blocked list.
6. When purchasing through RIN brokers, Calumet should purchase from reputable, well-known RIN brokers only.
7. Calumet should ensure that all RINs are purchased under contracts that specify how invalid RIN situations will be handled, and that provide Calumet with recourse if any of the RINs purchased are determined to be invalid.